

CHANGE REQUEST COVER SHEET

Change Request Number: 09-46

Date Received: 3/10/2009

Title: Appendix D - Lease Terms

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Policy OR Guidance: Guidance

Section/Text Location Affected: 2.4.4

Summary of Change: Revisions, updates, and change citation

Reason for Change: To make revisions, updates, and correct citation

Development, Review, and/or Concurrence: AGC-520

Target Audience: RECOs

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Real Estate Guidance :

Section 2.4.4 : Appendix D: Lease Terms [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 2.4.4 : Appendix D: Lease Terms

Old Content: Real Estate Guidance :

Section 2.4.4 : Appendix D: Lease Terms

A. Firm-Term Lease Consideration

As provided in 49 U.S.C., Section 40110 (b)(2)(A) [copy attached] the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. ***Note: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated.***

However, this does not relieve FAA from obtaining necessary budget authority before proceeding with a "firm-term" lease. Generally budget authority must be obtained for the rent for the entire period covered by the firm term, even though the funds are only obligated one year at a time. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options.

For purposes of this guidance a firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed, the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front. The using organization must consider the budgetary impact of firm term lease funding and score the lease for proper budget authority before issuing a requisition and certifying the funds for the first year's rent. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the RECO, there is any doubt about the long-term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration.

Flexibility, especially in space leasing, needs to be part of the consideration for entering into a firm-term lease. As an example, if some cost savings would be realized with a 10-year firm-term space lease versus a 5-year firm-term lease, then some thought must be given to the potential for change (i.e., mission or operational need) at this facility in years 6-10. In this situation, it may be more advantageous to the FAA to lease for 5 years firm with an option to renew for an additional 3-5 years firm. It should be remembered that in the past, if space was requested for 5 years (based upon projected need) the FAA could lease for 10 years, without adverse ramifications, because the lease had an option to renew each year.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the RECO.

1.) Real Estate Firm-Term Considerations:

- 1) How long is the end user prepared to commit, in writing, to stay in this location? How comfortable does the real estate acquisition team feel about this time frame?
- 2) Does any savings or benefit obtained in a longer firm-term justify the potential risk to the FAA?
- 3) Can two shorter firm-term periods serve almost the same purpose as one longer?

Firm-term period?

- 4) Does the firm-term period selected provide the FAA with the appropriate flexibility?
- 5) Is the FAA offering a firm-term lease because of a true market need or because one offeror has requested a longer firm-term?

6) Will the firm-term period allow amortization of the cost of alterations or construction in the rental payments instead of making a lump-sum payment? (The majority of commercial rental rates include a square footage allowance for amortizing the cost of initial space alterations over a specified period.)

2.) Firm-term authority for space leases only:

Regions/Centers:

1-5 Years Firm-term

Usual firm-term period. Most real estate markets can provide a competitive rental rate with 3 to 5 years firm. Consider using two or more 1-5 year firm periods instead of a longer initial firm-term period. *For example, 9 year lease, 3 years firm, with 2 renewal options of 3 years firm for each or 10-year lease, 5 years firm with renewal option for 5 years firm.*

6-10 Years Firm-term

May be needed for new lease construction. Typically 10 years firm is utilized when only lease construction will satisfy the FAA needs. Again, consider offering two shorter firm-term periods. as shown in the example above.

Regions/Centers with Headquarters Approval:

11-15 Years Firm-term Usual situation. The real estate market should clearly indicate that little or no competition would be obtained unless a firm-term of 11-15 years is offered. Should only use in unusual situations.

16-20 Years Firm-term Rarely used. Firm-terms of 16-20 years should only be used for very large (regional office building size, large towers, etc.) or costly blocks of space. Use of 20 years firm should be rare in the FAA and used only after careful consideration. Typically, used for a prospectus level project.

To insure that required prospectus packages and other legal requirements are appropriately considered, regional requests for firm-term leases that exceed 10 years require the review and concurrence of the Planning, Policy and Performance Division ALO-200. However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Planning, Policy and Performance Division ALO-200, in order to insure that all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Planning, Policy and Performance Division ALO-200. The requests should be no more than 2 pages (exclusive of any transmittal memo or other attachments) and include the following:

- Current location, square feet, annual lease costs, including any services or unusual features.

- Proposed location or area, square feet, estimated annual lease costs, including any services or unusual features and explanation of how competition will be obtained.
- Justification of the need to exceed 10 years firm and how will it benefit the FAA.
- Any additional relevant facts.
- Attach a memo signed by the customer indicating their intent to remain for the firm-term period requested.
- A signature and date line at the bottom of the transmittal memo for concurrence by the Planning, Policy and Performance Division ALO-200

B. Other Lease Considerations:

To provide some protection to the FAA, the lease should include a clause allowing the FAA to sublease the premises in whole or in part. Additionally, the lease should allow the FAA rights to alter the premises to suit a new tenant.

C. Examples Of Clauses For Space Lease Documents:

15 year lease, 5 years firm, with termination after 5th year.

“To have and hold the said premises with their appurtenances for the term beginning on January 1, 1990, through December 31, 2005, inclusive; subject to termination and renewal rights as may be hereinafter set forth. The Government has the right to terminate this lease on 120 days notice on or after December 31, 1995”

15 year lease, 5 years firm, with termination after 5th year OR renewal for 3 years firm with termination after 5th year.

“To have and hold the said premises with their appurtenances for the term beginning on January 1, 1990, through December 31, 2005, inclusive; subject to termination and renewal rights as may be hereinafter set forth. The Government has the right to terminate this lease on December 31, 1995, with 90 days notice. In the event the Government elects not to terminate this lease on December 31, 1995, the Government may terminate this lease on 90 days notice on or after December 31, 1998”

New Content: Real Estate Guidance :

Section 2.4.4 : Appendix D: Lease Terms

A. Firm-Term Lease Consideration

As provided in 49 U.S.C., Section 40110 (c)(1) [copy attached] the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. ***Note: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated.***

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However, this does not relieve FAA from obtaining necessary budget authority before proceeding with a “firm-term” lease. Generally budget authority must be obtained for the rent for the entire period covered by the firm term, even though the funds are only obligated one year at a time. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options.

For purposes of this guidance a firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed, the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front. The using organization must consider the budgetary impact of firm term lease funding and score the lease for proper budget authority before issuing a requisition and certifying the funds for the first year's rent. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the RECO, there is any doubt about the long-term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration.

Flexibility, especially in space leasing, needs to be part of the consideration for entering into a firm-term lease. As an example, if some cost savings would be realized with a 10-year firm-term space lease versus a 5-year firm-term lease, then some thought must be given to the potential for change (i.e., mission or operational need) at this facility in years 6-10. In this situation, it may be more advantageous to the FAA to lease for 5 years firm with an option to renew for an additional 3-5 years firm. It should be remembered that in the past, if space was requested for 5 years (based upon projected need) the FAA could lease for 10 years, without adverse ramifications, because the lease had an option to renew each year.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the RECO.

1.) Real Estate Firm-Term Considerations:

1) How long is the end user prepared to commit, in writing, to stay in this location? How comfortable does the real estate acquisition team feel about this time frame?

2) Does any savings or benefit obtained in a longer firm-term justify the potential risk to the FAA?

3) Can two shorter firm-term periods serve almost the same purpose as one longer?

Firm-term period?

4) Does the firm-term period selected provide the FAA with the appropriate flexibility?

5) Is the FAA offering a firm-term lease because of a true market need or because one offeror has requested a longer firm-term?

6) Will the firm-term period allow amortization of the cost of alterations or construction in the rental payments instead of making a lump-sum payment? (The majority of commercial rental rates include a square footage allowance for amortizing the cost of initial space alterations over a specified period.)

2.) Firm-term authority for space leases only:

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To insure that required prospectus packages and other legal requirements are appropriately considered, regional requests for firm-term leases that exceed 10 years require the review and concurrence of the Real Property Planning, Policy and Budget Division ALO-200. However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Real Property Planning, Policy and Budget Division ALO-200, in order to insure that all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Real Property Planning, Policy and Budget Division ALO-200. The requests should be no more than 2 pages (exclusive of any transmittal memo or other attachments) and include the following:

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